



**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

APPEAL DECISION SUMMARY

APPEAL No: 2010-1926

DATE: September 9, 2010

OUTCOME: (check one)

 X SUSTAINED REVERSED REMANDED
 INVALID/FULL
 SUSTAINED and REMANDED
 REVERSED and REMANDED
 AGENCY ERROR/OTHER

ISSUE ON APPEAL: Eligibility – ABD –excess resources

GENERAL RULE OF LAW: Standards for resource eligibility

1. 42 U.S.C. § 1396a(a)(17)(B) requires a state plan for medical assistance to include:

reasonable standards . . . for determining eligibility for and the extent of medical assistance under the plan which . . . (B) provide for taking into account only such income and resources as are, as determined in accordance with standards prescribed by the Secretary, available to the applicant or recipient.

2. As a program based on need, Medicaid uses the value of a person's countable resources as one of two financial criteria in determining eligibility. The other criterion is income. Medicaid Manual, Volume XIII, M1110.001, A (p. 1).
3. Resources are cash and any other personal or real property that an individual (or spouse, if any) owns; has the right, authority, or power to convert to cash (if not already cash); and is not legally restricted from using for his/her support and maintenance. Medicaid Manual, Volume XIII, S1110.100, B, 1 (p. 3).
4. Liquid resources are any resources in the form of cash or in any other form which can be converted to cash within 20 workdays. Absent evidence to the contrary, we assume that checking and savings accounts are liquid resources. Medicaid Manual, Volume XIII, S1110.300, A, 1 (p. 8); S1110.305, B, 1 (p. 8).
5. The eligibility worker must verify the value of all countable, non-excluded resources. Medicaid Manual, Volume XIII, M0130.200, H (p. 8).

6. The countable value of a bank account is the lower of the balance before income is added, or the ending balance minus any income added during the month. Funds cannot be both income and a resource in the same month. Income that has been added to a bank account during the month must be subtracted from the ending balance to ensure that the income is not also counted as a resource. Medicaid Manual, Volume XIII, M1110.600, B, 3 (p. 18); M1140.200, B, 5 (p. 18).
7. An item is not subject to both income and resources counting rules in the same month. Items received during a month are evaluated under the income-counting rules. Items retained as of the first moment of the month following receipt are subject to evaluation under resource-counting rules. Medicaid Manual, Volume XIII, S1120.005, A, B, 1, 2 (p. 1).
8. The enactment of OBRA 93 changed the evaluation of trusts established (other than by a will) on or after August 11, 1993. Assets of trusts established other than by a will may be countable as income, resources, or as asset transfers. Trusts established for disabled individuals are treated differently. Medicaid Manual, Volume XIII, M1120.200, A (p. 12).
9. A trust is a property interest whereby property is held by an individual (trustee) subject to a fiduciary duty to use the property for the benefit of another (the beneficiary). Medicaid Manual, Volume XIII, M1120.200, B, 1 (p. 12a).
10. A grantor (also called a settlor or trustor) is a person who creates a trust. An individual may be a grantor if an agent, or other individual legally empowered to act on his/her behalf (e.g., a legal guardian, representative payee for title II/XVI benefits, a person acting under a power of attorney or conservator), establishes the trust with funds or property that belong to the individual. The terms grantor, trustor, and settlor may be used interchangeably. Medicaid Manual, Volume XIII, M1120.200, B, 2 (p. 12a).
11. A trustee is a person or entity who holds legal title to property for the use or benefit of another. In most instances, the trustee has no legal right to revoke the trust or use the property for his/her own benefit. Medicaid Manual, Volume XIII, M1120.200, B, 3 (p. 12a).
12. A trust beneficiary is a person for whose benefit a trust exists. A beneficiary does not hold legal title to trust property but does have an equitable ownership interest in it. Medicaid Manual, Volume XIII, M1120.200, B, 4 (p. 12a).
13. If an individual (applicant or recipient) has legal authority to revoke the trust and then use the funds to meet his food, clothing or shelter needs, or if the individual can direct the use of the trust principal for his/her support and maintenance under the terms of the trust, the trust principal is a resource for Medicaid purposes. Medicaid Manual, Volume XIII, M1120.200, D, 1, a (p. 15).
14. If an individual does not have the legal authority to revoke the trust or direct the use of the trust assets for his/her own support and maintenance, the trust principal is not the individual's resource. The revocability of a trust and the ability to direct the use of the trust principal depends on the terms of the trust agreement and/or on State or federal law. If a trust is irrevocable by its terms and under State law cannot be used by an individual for support and maintenance, it may not be a resource. Evaluate the trust in accordance with the following

sections...M1120.201, Trusts Established on or after August 11, 1993... Medicaid Manual, Volume XIII, M1120.200, D, 2 (p. 16).

15. The value of any asset that meets the definition of a resource counts against the applicable resource limit, unless otherwise excluded. Medicaid Manual, Volume XIII, S1110.200 (p. 6).
16. The resource limit for one person in the Categorically Needy, Categorically Needy Non-Money Payment, and Medically Needy covered groups is \$2,000. Medicaid Manual, Volume XIII, M1110.003, B, 2 (p. 2).
17. An individual with countable resources in excess of the applicable limit is not eligible for Medicaid. Medicaid Manual, Volume XIII, M1110.003, B, 1 (p. 2).
18. An individual must be a Virginia resident in order to be eligible for Medicaid. Medicaid Manual, Volume XIII, M0230.001, A, F (p. 1).
19. When two or more states cannot resolve the residency, the state where the individual is physically located becomes the state of residence. Medicaid Manual, Volume XIII, M0230.001, I (p. 2).
20. For an individual age 21 or older, the determination of state residency depends on whether or not the individual is capable of indicating his or her intent to reside in the state. The state of residence is Virginia when the individual is living in Virginia with the intention to remain in Virginia permanently or for an indefinite period. Medicaid Manual, Volume XIII, M0230.202, A, B (p. 5).
21. The patient's former home is his primary residence which he owns, and which he occupied as his residence prior to admission to a LTC facility. Medicaid Manual, Volume XIII, M1460.530, B, 4 (p. 20).
22. The former home property is excluded for 6 full months beginning with the month following the month of institutionalization in a medical facility. Medicaid Manual, Volume XIII, M1460.530, D, 2 (p. 21).

AGENCY DECISION: The hearing officer found in favor of the agency, based upon the following:

The Appellant applied for Medicaid coverage. The agency verified the resources, and determined that the Appellant's resources exceeded the Medicaid resource limit. Therefore, the local agency denied Medicaid coverage.

APPLICABLE CITATIONS FOR ACTION:

United States Code,
42 USC § 1396a(a)(17)(B)

Medicaid Manual, Volume XIII

M0130.200, H (p. 8)
M0230.001, A, F (p. 1)
M0230.001, I (p. 2)
M0230.202, A, B (p. 5)
M1110.001, A (p. 1)
M1110.003, B, 1-2 (p. 2)
S1110.100, B, 1 (p. 3)
M1110.300, A, 1 (p. 8)
M1110.305, B, 1 (p. 8)
M1110.600, A (p. 18)
M1120.005, A, B, 1, 2 (p. 1)
M1120.200 (p. 6)
M1120.200, A (p. 12)
M1120.200, B, 1-4 (p. 12a)
M1120.200, D 1-2 (pp. 15-16)
M1120.201, A-B (p. 20)
S1140.200, B, 5 (p. 18)
M1460.530, B, 4 (p. 20)
M1460.530, D, 2 (p. 21)